

sis of the Act and the established principles applicable to strike out an action under O 18 r 19 of the Rules of the Supreme Court 1970 ('the RSC').

A cause of action is a claim based on a legal entitlement or the violation of a legal right. The assertion of a claim must set out all the essential acts to support the claim. If a purported claim does not comply with these criteria or the statement of claim on its face shows that it is not sustainable, a defendant may apply to strike out the statement of claim on the ground that it does not disclose a reasonable cause of action. No affidavit can be filed in support of such application because it is essentially a question of law and the pleaded facts are presumed to be true in favour of the claimant: see RSC O 18 r 19(2).

On the other hand, where the claim is stated to be invented or its prosecution fated to be futile and fruitless, the application should be founded on the other grounds. In that case facts are everything. An affidavit of facts in support of such grounds must be filed.

Courts are reluctant to strike out a claim summarily either under O 18 r 19 of the RSC or the inherent jurisdiction. This is anchored on the judicial policy to afford a litigant the right to institute a bona fide claim before the courts and to prosecute it in the usual way. Whenever possible the courts will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable: see *Blue Town Investments Ltd v Higgs & Hill plc*¹ and *Oxy Electric Ltd v Zainuddin*.²

In this case the plaintiff based his claim on a legal entitlement to adverse possession. That clearly is a reasonable cause of action recognized by law. There is nothing on the face of the statement of claim which disentitled the plaintiff from asserting his claim.

The analysis of the relevant provisions of the Act and the facts before the court clearly show that the plaintiff has an arguable case. The final event may well be that the defendants' case is unarguable.

In the circumstances, the defendants' application to strike out the claim must fail. The action should accordingly be permitted to proceed in the usual way.

The plaintiff will have the costs of the appeal fixed at \$5,000. As the arguments placed before this court were not articulated before the registrar, there will be no order as to costs in respect of the hearing below.

Appeal allowed.

Solicitors: *Yap & Yap; Hin Rai & Tan.*

Reported by *Rosalind Tan*

A Hilti Far East Pte Ltd v Tan Hup Guan

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS
NO 1327 OF 1990
CHAN SEK KEONG J
23 APRIL 1991

B *Personal Property — Ownership — Motor car purchased by employer but registered in the name of employee — Employee refusing to return motor car — Whether ownership remained with employee*

Tort — Detinue — Motor car purchased by company in the name of employee — Employee refusing to return motor car — Whether owners entitled to immediate ownership

C The defendant was an employee of the plaintiffs. As a term of his employment he was entitled to a motor car. The plaintiffs purchased a motor car and registered it in the name of the defendant who signed a declaration of trust in favour of the plaintiffs. On 2 October 1990, the defendant was dismissed from the employ of the plaintiffs. When asked to return the motor car, he refused. The plaintiffs took out an action for a declaration that they were the beneficial owners of the motor car and for an order that the defendant deliver up the said motor car.

Held, allowing the application:

E (1) Although the plaintiffs had claimed a declaration of trust, it was not a trust which gave them a right to possession of the said car. The said trust, in terms, did not oblige the defendant to deliver up possession of the said motor car to the plaintiffs. It only obliged him to effect the transfer of the said car. The defendant did not own the car and the registration in his name did not make him the owner at law.

F (2) The legal title to the said car passed to the plaintiffs when they bought it. They had given possession of the said car to the defendant and registered it in his name for a specific purpose, with no intention whatever of transferring legal or beneficial ownership thereof to the defendant. As owners, the plaintiffs were entitled to immediate possession of the said car upon the defendant ceasing employment with them.

Cases referred to

- 1 *Holman v Johnson* [1775-1802] All ER 98 (refd)
- 2 *Palaniappa Chettiar v Arunasalam Chettiar* [1962] MLJ 143 (refd)
- G 3 *Suntoso Jacob v Kong Miao Ming & Anor* [1984] 2 MLJ 95; [1986] 2 MLJ 170 (distd)
- 4 *Sajan Singh v Sardara Ali* [1960] MLJ 52 (foldd)

Legislation referred to

Road Traffic Act (Cap 276, 1985 Ed) ss 10, 11
Motor Vehicles (Registration and Licensing) Rules 1972 rr 2, 3, 5, 6, 7, 8, 20, 25, 27

H *Abdul Rashid (Anita Fam with him) for the plaintiffs.*
Rai Shrinivas for the defendant.

Cur Adv Vult

I **Chan Sek Keong J:** The defendant was employed by the plaintiffs. As a term of his employment, he was provided with a motor car ('the said car') which the plaintiffs purchased on 2 January 1990 and had it registered in the name of the defendant. The plaintiffs paid the initial registration fee, the insurance premium and

the road tax and also the maintenance costs subsequently. The registration book of the said car was kept with the plaintiffs. The defendant took possession of the said car and made a declaration of trust in these terms:

... I stand possessed of the said vehicle in trust for [the plaintiffs]...I will sign and execute all documents and do all things which may be necessary to effectuate the transfer of the said vehicle to [the plaintiffs] or as it may direct.

The defendant was dismissed from employment on 2 October 1990 for 'insubordination and misconduct'. He refused to return the said car to the plaintiffs. On 5 October 1990, the plaintiffs wrote to the Registrar of Vehicles ('the ROV') informing him of the ownership of the said car and requesting him not to allow it to be transferred by the defendant without production of the registration book. The ROV replied that he could not stop any application for transfer of vehicle ownership if the requisite documents were submitted.

The plaintiffs commenced this action for the following orders: a declaration that they were the beneficial owners of the said vehicle, an order restraining the defendant from using it, damages, and an order for delivery up to the plaintiffs.

The defendant entered appearance and put in a defence that the trust was illegal and therefore unenforceable as it was: 'aimed at evading revenue', 'a deception on the administration of the Republic of Singapore' and contrary to public policy. Counsel referred to a number of authorities: *Holman v Johnson*,¹ *Palaniappa Chettiar v Arunasalam Chettiar*² and *Suntoso Jacob v Kong Miao Ming*.³

Counsel for the plaintiffs argued that the registration of the said car in the name of the defendant was not prohibited by the Road Traffic Act (Cap 276, 1985 Ed) ('the Act') and therefore could not be an evasion of revenue or a deception of the public administration. The plaintiffs adduced evidence to show that they had made full disclosure to the Inland Revenue Department of such transport benefits given to employees in their IR8A Forms and also that they made no claim in their tax returns for depreciation allowances and the expense of maintenance for such cars. In regard to the defendant, the plaintiffs had actually omitted disclosing the said benefit in his IR8A Form for the year of assessment 1990, but I accepted the explanation of the plaintiffs' financial controller that the said omission was inadvertent. The omission did not benefit the plaintiffs in any way.

The issue of revenue evasion had two aspects: (a) income tax and (b) registration fee and road tax. As to the first, the evidence clearly showed no evasion whatever by the plaintiffs. Indeed, the said arrangement adopted by the plaintiffs resulted in the plaintiffs having to pay more income tax.

A The second aspect was more problematical as the arrangement did result in the plaintiffs having paid less registration fee and road tax than otherwise they would have paid if the said car had been registered in their name. Was it a case of tax evasion or tax avoidance? Counsel for the plaintiffs argued that in the absence of any statutory prohibition of the said arrangement, the plaintiffs were not obliged to register the said car in a manner which would attract the imposition of higher fees. It was, at the highest, tax avoidance. He referred to a number of cases on tax avoidance which I do not propose to refer to as they have no relevance to the issues before me.

C *The Act*

D It is necessary to examine the provisions of the Act to determine whether the registration of the said car in the name of the defendant was illegal or a deception on the public administration. Section 10 (as it was) provided as follows:

(1) Except as otherwise provided by this Act or rules, no person shall keep or use a vehicle unless it has been registered under this Act.

(2) The Registrar may charge such fees as may be prescribed for the registration of a vehicle under this Act.

E Section 11, in so far as relevant, provided as follows:

(1) Subject to the provisions of this Act and the rules, a tax shall be charged in respect of —

(a) the first registration of every vehicle under this Act; and

F (b) every vehicle used or kept on any road in Singapore, and the tax shall be paid upon a licence to be taken out by the person keeping the vehicle.

G (2) The tax chargeable under subsection (1)(a) in respect of a vehicle shall be of such an amount as the Minister may prescribe from time to time and the Minister may prescribe different taxes for vehicles of different classes, categories or descriptions or vehicles used for different purposes.

(4) Any rates prescribed by the Minister may be so made to apply only to vehicles of a specified class, category or description and the Minister may prescribe different rates for vehicles of different classes, categories or descriptions or vehicles used for different purposes.

H Regulations for the registration and licensing of vehicles were made by the Motor Vehicles (Registration and Licensing) Rules 1972 ('the rules'). In so far as relevant to the present case, the provisions were as follows:

I Rule 2(1) defined a 'business service passenger vehicle' as 'a motor car registered in the name of (a) a statutory board, company, firm, society association or club and...is used for the owner's business or (b) an individual and is used for the purpose of any trade, business, profession or vocation.' Rule 2(2) defined a 'private motor car' as a motor car registered in the name

of a private individual and used by him for social or domestic purposes or for his business, excluding the carriage of goods.

Rule 3 provided for the *registration* of motor vehicles to be made in such form as the ROV might approve, such form to be fully and correctly completed by the applicant and delivered to the registrar, accompanied by the fees prescribed by the rules. Rule 5(1) provided for a scale of registration fees as set out in Part I of the First Schedule. Rule 6(1) provided for a scale of additional registration fees ('the ARF') as set out in Part II of the First Schedule, subject to r 7. Rule 7 provided for a scale of preferential registration fees (PARF for short). Rule 8 provided for a registration book to be issued to the person registered as the owner of a motor vehicle. Rule 20A(1) provided that a motor vehicle registered as a business service passenger vehicle should not be transferred to and registered in the name of an individual for use as a private motor car, save for three exceptions.

Rule 25(1) provided for the *licensing* of a motor vehicle to be made in such form as the ROV might require, to be made by the person applying under r 3 of the rules to be registered as the owner of such vehicle. Subrule 3 provided for such application to be signed by the person requiring the licence or if made by a company, firm, or other body (whether corporate or otherwise) other than an individual such application to be signed by a managing director, manager, partner, or other officer of such body duly authorized to sign on its behalf.

Rule 27 provided as follows:

An individual who uses his motor car for the purpose of any trade, business, profession or vocation may, at his option, register his motor car as a business service passenger vehicle or a private motor car.

Under Part I of the First Schedule, the registration fee for a private motor car was fixed at \$1,000 whereas that for a business service passenger vehicle was fixed at \$5,000. Under Part II thereof, the ARF was 175% of the value of the vehicle used for either purpose.

Under the Second Schedule, the annual road tax for business service passenger vehicles was double that for private motor cars.

Revenue evasion/avoidance and deception of public administration

It should be noted that none of the above provisions contained any prohibition against a company registering its motor cars in the name of individuals, or provided a sanction or penalty if it did that. Nevertheless, counsel for the defendant argued that there was an evasion of revenue resulting from a deception of the public administration. He sought to prove this point by refer-

ence to a letter from the ROV dated 15 March 1991 in which he stated that he would not have registered the said car as a private motor car if the full facts had been disclosed to him. Counsel equated this statement of the ROV to that of the Registrar of Ships in the case of *Suntoso Jacob*,³ on which he strongly relied. In that case, SJ, who was not a Singapore citizen, was the majority shareholder of a shipping company. He transferred 92,000 shares in the company to KMM, a Singapore citizen, so as to make KMM the majority shareholder. This was done to enable the company to register a tugboat as a Singapore ship, thus avoiding an administrative directive, of which SJ was aware, which prevented any vessel owned by a foreign-controlled company from being registered as a Singapore ship. The registration of the ship was duly effected. Later, KMM refused to return the shares and SJ commenced an action to claim the shares on the basis that KMM held the shares on an express trust for SJ. Evidence was adduced that the Registrar of Ships would not have registered the tugboat as a Singapore ship if he had known that the 92,000 shares were held in trust for SJ. Lai Kew Chai J dismissed SJ's claim on the ground that as he had practised a deception on the public administration of Singapore, the court would not lend its aid to him. Lai Kew Chai J applied the well known principle laid down in *Holman v Johnson*¹ and applied *Chettiar v Chettiar*.²

SJ appealed to the Court of Appeal. His counsel advanced a new argument that the shares were held on a resulting trust and attempted to distinguish *Chettiar v Chettiar*² on the ground that in that case, the father had to rebut the presumption of advancement in favour of the son, whereas on a resulting trust there was nothing to rebut. Counsel submitted that in view of the resulting trust, SJ could rely on his independent right to recover the shares. The Court of Appeal rejected the argument and dismissed the appeal. The court (at p 173) said:

In all the three cases (*Bowmakers Ltd v Barnet Instrument Ltd* [1945] 1 KB 65, *Sajan Singh v Sardara Ali* [1960] MLJ 52, PC and *Amar Singh v Kulubya* [1964] AC 142, PC), the plaintiffs were not relying on the illegal agreements which they had entered into but on their rights of ownership of the properties concerned; such rights subsisted independently of the illegal agreements. In the instant case, however, the position is different. The appellant's claim is not based on any independent right of ownership of the said shares; like the father in *Chettiar's* case he had transferred the property to the transferee on the understanding that the latter was to hold it on trust for him. To recover the property he has to rely on the trust created in his favour and in so doing the illegal purpose of the transfer that gave rise to the trust emerged. Even if the appellant is relying on the resulting trust of the said shares by virtue of the transfer thereof to the respondent without any payment, the unlawful purpose of the transfer cannot be ignored. It is too artificial to sever the purpose from the transaction, ie the transfer of the said shares to the respondent without any payment, and look at only the transaction in isolation and say that it was not tainted by the unlawful purpose. The

intention of the parties and the purpose of the transaction are clearly relevant. Where a transaction which on the fact of it is lawful is entered into for an unlawful purpose or to achieve an unlawful end, the transaction is tainted with illegality and is unenforceable.

Although the Court of Appeal used the expression 'unlawful purpose' in the above passage, I do not think that the court intended to suggest that it was an offence to register a Singapore ship in the name of a foreign-controlled company. In fact, it was not. There was only the administrative directive, and therefore the expression should be understood in that context. The Court of Appeal in effect decided that a contravention of a departmental directive was sufficient to enable the court to refuse relief to the guilty party under the doctrine of a deception of the public administration.

In the present case, there was no evidence that the ROV had published a directive that companies would not be allowed to register their motor cars as private motor cars. Accordingly, the ROV's statement could not have the same legal effect as that of the Registrar of Ships in the *Suntoso Jacob* case.³ Moreover, the ROV's statement was only a bare statement unsupported by any reason or explanation on when, where or how he had been deceived by the plaintiffs or the defendant.

Nevertheless, I should add that there was certainly a legislative policy behind the imposition of higher registration and licensing fees for company cars. It was probably to deter companies from providing private transport to their employees (resulting in traffic congestion on the roads, more environmental pollution, etc). In other words, the imposition was regulatory rather than fiscal in nature. The rules provide contrasting definitions for a 'business service passenger vehicle' and a 'private motor car'. These definitions categorize motor cars according to their intended use. If it is to be used by an individual for the business of a company or a firm, it should be registered as a business service passenger vehicle, whether it is registered in the name of a company or an individual. If it is intended to be used by an individual for social or domestic purposes or for his own business, it should be registered as a private motor car although r 27 gives him an option to register it either as a private motor car or as a business service passenger vehicle. This option is not available to a company, and therefore, it may be argued that, by implication, a company has no such choice. In the present case, as the said car was provided to the defendant to use in the course of his employment, ie for the plaintiffs' business, it should have been registered as a business service passenger vehicle. By registering the said car as a private motor car, it could be said that the plaintiffs had undermined the legislative policy by taking advantage of the absence of an express prohibition or any penalty for so doing. On this basis, the ROV could legitimately say

A that he had been deceived by the plaintiffs registering the said car as a private motor car when it was not intended that the same be used as a private motor car. The State would also have lost revenue in the result.

B However, it was not necessary for me to decide whether or not the plaintiffs had been guilty of a deception on the ROV and/or successfully avoided the tax and licensing provisions of the Act. These were matters for the ROV to take action on if he considered that there had been an evasion of the statutory scheme of car registration and licensing. He has been informed of this case. In so far as this action was concerned, I was of the view that the plaintiffs were entitled to succeed on another well known principle of law.

C It should be remembered that in *Chettiar v Chettiar*,² the father, in order to evade the scheme of control of rubber production under the Rubber Regulations (No 17 of 1934), registered 40 acres of rubber land in the name of his son. Title to the land passed to the son under the law. He had to claim as a beneficial owner by way of trust, either express or resulting. He could not rely on his own title as he had none. Lord Denning, in delivering the judgment of the Privy Council, said (at p 145):

E In these circumstances it was essential for the father to put forward a convincing explanation why the transfer took the form it did: and the explanation that he gave disclosed that he made the transfer for a fraudulent purpose, namely, to deceive the public administration into thinking that he only held 99 acres of land and his son 40 acres, whereas in truth he himself meant to hold the whole 139 acres. Once this disclosure was made by the father, the courts were bound to take notice of it, even though the son had not pleaded it, see *Scott v Brown, Doering, McNab & Co.*

F For that reason, the Privy Council held that he could not use the courts to achieve a deceitful result and also get his property back. In that case, the Privy Council also referred to its own decision in *Sajan Singh's* case,⁴ that a person who did not have to rely on a fraudulent or illegal purpose but on his own title was able to recover any property belonging to him even though the property had been used for an illegal or fraudulent purpose. This was the basis on which the Court of Appeal in *Suntoso Jacob's* case³ distinguished *Sajan Singh's* case.⁴

H In the present case, although the plaintiffs had claimed a declaration of trust, it was not that trust which gave them a right to possession of the said car. The said trust, in terms, did not oblige the defendant to deliver possession of the said car to the plaintiffs. It only obliged him to effect the transfer of the said car, ie the registered ownership of the car. The defendant did not own the car and registration in his name did not make him the owner at law. As the Privy Council said in *Sajan Singh's* case,⁴ at p 54:

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Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale: but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see *Bishopsgate Motor Finance Corp Ltd v Transport Brakes Ltd* at p 388.

In that case, SA and SS came to an illegal arrangement whereby SA would buy a lorry and register it in the name of SS as SA could not get a haulage permit to use the lorry for the carriage of goods whereas SS could and did. SA had possession of the lorry and used it as his own but in the name of SS. SA also paid all the operating expenses including road tax, insurance, petrol and also income tax on the profits of the operations. The parties fell out and SS took possession of the lorry. SA commenced an action for detinue and trespass. The Privy Council held that he was entitled to succeed on both counts: in trespass, because he had actual possession of the lorry before it was taken by SS, and in detinue because the property in the lorry had passed to him even though the transaction was illegal.

In the present case, the legal title to the said car passed to the plaintiffs when they bought it. They had given possession of the said car to the defendant and registered it in his name for a specific purpose, with no intention whatever of transferring legal or beneficial ownership thereof to the defendant. The said car was entered in its books as an asset of the company, as confirmed by their income tax returns. As owners, they were entitled to immediate possession of the said car upon the defendant ceasing employment with them. They were probably entitled to possession of the said car even if the defendant had not ceased to be an employee, as the plaintiffs' contractual obligation was to provide a transport facility and not a specific motor car.

For the above reasons, I gave judgment in favour of the plaintiffs with costs.

Application allowed.

Solicitors: *Khattar Wong & Partners; Hin Rai & Tan.*

Reported by *Mathavan Devadas*

A Indian Bank v Ramachandran & Ors

HIGH COURT (SINGAPORE) — SUIT NO 9300 OF 1984
GOH PHAI CHENG JC
14 MARCH 1991

Banking — Guarantee — Standard form guarantee to be executed by first to seventh defendants jointly and severally — First to sixth defendants executed the guarantee which named all seven defendants while seventh defendant executed separate guarantee — Whether first to seventh defendants liable jointly and severally under the two guarantees

The plaintiffs carried on business as bankers in Singapore. All the seven defendants were directors of Wesmapack (Singapore) Pte Ltd ('the company'). In January 1982, the company applied for banking facilities from the plaintiffs. The plaintiffs were willing to extend the banking facilities to the company provided the seven defendants executed the plaintiffs' standard form guarantee for the said facilities. The guarantee (the 'first guarantee') was prepared and signed by the first to sixth defendants only as the seventh defendant was away in England. The seventh defendant, however, signed a separate standard form guarantee (the 'second guarantee') which was identical to the first guarantee except that the first guarantee had all the names of the seven defendants as co-sureties and the second guarantee had only the name of the seventh defendant shown as surety. The company was however unable to settle the amount due under the banking facilities with the plaintiffs and was wound up on 11 November 1983. The plaintiffs then demanded payment from the seven defendants on the basis that all seven defendants were jointly and severally liable under the first and second guarantees notwithstanding the first guarantee was only signed by the first to sixth defendants and the second guarantee was only signed by the seventh defendant. The plaintiffs' counsel submitted that the essential issue, in the circumstances of the case, was that where the parties had an agreement for guarantees to be furnished by the directors of the company, that agreement need not be evidenced on a single document in order that all the seven defendants can be held jointly and severally liable for the banking facilities.

Held, dismissing the plaintiffs' claim against the third to seventh defendants:

(1) The fourth and sixth defendants had not given their consent to the plaintiffs that the seventh defendant need not sign the first guarantee and that the second guarantee signed by the seventh defendant is to be regarded as an addendum to the first guarantee. The fourth, sixth and seventh defendants were not given a copy of the first guarantee either by the company or the plaintiffs and they were only aware that the seventh defendant signed the second guarantee and did not sign the first guarantee after the plaintiffs commenced proceedings for the recovery of the sum guaranteed by all seven defendants.

(2) The first guarantee had a recital which stated that it was to be signed by the seven defendants who were to be jointly and severally liable for overdraft facilities granted by the plaintiffs to the company. It was a condition precedent that the first guarantee was to be executed by all persons named as co-sureties. Where a promise was intended to be made by several persons jointly but if any one of those persons fails to execute the instrument of the agreement, there is no contract and no liability is incurred by such of them as have entered into the agreement. The plaintiffs were not able to